

**AT AUCKLAND**

<b>Appellant:</b>	<b>AB (Jordan)</b>
<b>Before:</b>	A R Mackey (Chair) C M Treadwell (Member)
<b>Counsel for the Appellant:</b>	S You
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	4 and 5 July 2011
<b>Date of Decision:</b>	9 December 2011

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**DECISION**

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**INTRODUCTION**

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch of the Department of Labour, declining to grant refugee status or protected person status to the appellant, a citizen of Jordan.

[2] The appellant claims to have converted from Islam to Christianity in Jordan and to be at risk of serious harm from his family and clan, who have denounced him and called for him to be killed. The central issue is the credibility of that account.

[3] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

**THE APPELLANT'S CASE**

[4] The Tribunal heard from the appellant and from AA, a friend.

[5] The account which follows is that given at the appeal hearing. It is assessed later.

### **The Evidence of the Appellant**

[6] The appellant was born in Kuwait in 1976, to Muslim parents of Jordanian nationality, because his father was working in that country. He has a brother, BB, and two sisters. Like the appellant, his siblings are Jordanian nationals and do not have Kuwaiti citizenship. The appellant's father is a high-ranking leader of the XX clan, one of the largest clans in Jordan.

[7] In 1990, the family returned to Jordan because of the invasion of Kuwait by Iraq. They settled in ABC, a city of over one million people about 35km from Amman. The appellant was about 14 years of age.

[8] The appellant was raised as a reasonably devout Muslim, attending a mosque to pray five times a day and going to Islamic Society prayers on Fridays. He also took Islamic studies twice a week.

[9] In the last 10 years, the appellant has made a number of trips to other countries, including Canada, the United States and Mexico, usually for a period of some three months at a time.

[10] In early 2007, the appellant was working in a music shop in ABC city when he met a group of young Christians. He noticed that they were kind and seemed to enjoy life much more than Muslim youths. Their belief in their religion was clearly genuine.

[11] The appellant and his new friends met about four times a week. He became close friends with one member of the group in particular, EE. The appellant did not tell his parents of his friendship with the group because he knew they would not approve.

[12] Initially, the appellant had no interest in Christianity but, as time passed, he questioned his friends more closely. He became more accepting of their faith. Eventually, he began to have dreams which included visions and symbols which he interpreted as leading him to the Christian faith.

[13] After some two years of consorting with his Christian friends, the appellant's belief in Islam had withered. He still attended the mosque but it was for show only. He secretly read about Christianity and studied it on the Internet.

[14] In early 2009, the appellant watched a television programme about Christianity. It gave a telephone number for anyone to call for more information. The appellant called the number and was referred to a Pastor, who gave him the contact details for the PQR Church in Amman. The Pastor also agreed to send the appellant a Bible, for which the appellant gave a friend's address.

[15] The appellant visited the PQR Church – an old building of white marble with a wooden side door near an intersection in MNO suburb. Inside, he was welcomed by the congregation and was made to feel at home. It was run by two American Pastors, CC and DD.

[16] Thereafter, the appellant began attending the church's 10am service every Sunday as well as Bible Study classes. He would go to the church at least two or three times a week. To his surprise, he found that the PQR Church was the same church that his group of Christian friends from ABC city attended.

[17] By late 2009, the appellant became concerned that his parents were suspicious about his diminishing interest in Islam. He had, by this stage, stopped attending the mosque.

[18] In February 2010, he returned one Sunday from a church service and went to his room. His father entered behind him and locked the door. He then beat the appellant severely with his hands and a long wooden stick, shouting abuse at him for dishonouring the family and the Islamic faith. He threatened to kill the appellant in front of the rest of the family, in order to restore the family's honour.

[19] The appellant's father searched his room and found the Bible he had been sent. He tore it to pieces before leaving the room.

[20] The appellant then heard his father on the telephone to one of the appellant's uncles, telling him that the appellant had been seen entering a church and had possession of a Bible. He asked the uncle to come around urgently. Hearing this, and knowing his uncles to be devout Muslims, the appellant feared for his life. He gathered up things he would need, including a mobile telephone, his passport, medical insurance papers (he had been injured by his father) and his wallet. He then left the house and, from a safe distance, telephoned his friend EE.

[21] EE collected the appellant and took him back to his house. He told the appellant he could remain there but not to go outside. He fetched medication for the appellant.

[22] For more than a month, the appellant remained at EE's house, in hiding. One Sunday in early March 2010, EE reported to him that a large gathering of the XX clan had gone to the church that day, looking for the appellant. The appellant's father had been among the group. The police and other people, Islamic extremists by their dress, were also present.

[23] In fear of being punished as an apostate, the appellant began considering leaving the country. EE suggested he go to the far east or to New Zealand. The appellant duly lodged a visitor's visa application with Immigration New Zealand. To support it, EE provided a bogus letter of employment which he obtained from a man in a computer shop. It asserted that the appellant had worked for the DEF Company as a programmer and technical support person since 2004 and was due to take annual leave.

[24] EE also assisted the appellant by depositing funds into the appellant's bank account temporarily, so that he could show Immigration New Zealand that he had sufficient funds to travel and helped him to buy a return ticket.

[25] In mid-April 2010, the appellant made a surreptitious return to his family home, to collect clothes and shoes. He periodically watched the house from a distance over several days to ensure that no-one was at home before he went in.

[26] In early May 2010, the appellant left Jordan and travelled to New Zealand. Once he arrived here, he began using the first name "FF".

[27] In mid-May 2010, the appellant saw the GHI Church in Auckland. He went in and talked to the Vicar, Reverend GG. The next Sunday, he went back to the church and told Reverend GG of his background and difficulties. He was advised to seek refugee status. Since then, the appellant has attended the church every week for service and prayers. He also goes to men's study classes and was given a Bible, which he reads. He has been baptised.

[28] The appellant lodged an application for refugee status on 25 May 2010.

[29] To support his claim, the appellant contacted EE in Jordan and asked him to obtain a letter from Pastor DD. When EE did so, a man overheard the conversation and gave EE a document which he was distributing, dated 10 May 2010, entitled "A Special Statement of XX Clan". It condemned the appellant for apostasy, recorded that his family had disowned him and urged anyone who saw him to report it to the clan or to the police, or to kill him.

[30] EE sent both the letter from Pastor DD and the "Special Statement" to the appellant.

[31] The appellant says that if he returns to Jordan, he is at risk of being killed or otherwise seriously harmed by members of his family and the wider XX clan. The security forces will not, he says, protect him from such harm.

### **Evidence of AA**

[32] AA is a New Zealand citizen and a member of the congregation of the GHI Church which the appellant attends. He has known the appellant since May 2010.

[33] AA sees the appellant regularly at church and in the men's study group which the appellant attends. He confirms that the appellant has sought baptism through the church but is also aware that the appellant is still converting.

[34] The appellant is a genuine convert to Christianity, in AA's view. AA has had past experience of church attendees using the church as a vehicle for their own ends, without any genuine belief in Christianity. He does not think that the appellant is of that ilk. When he was given a copy of the Bible in Arabic, his excitement and pleasure was obvious. His involvement in the discussions in the study group is also strong.

### **Material and Submissions Received**

[35] The Tribunal has before it the paginated Refugee Status Branch file, which includes all documents submitted by the appellant at first instance.

[36] The appellant produces, on appeal:

- (a) A statement dated 18 July 2011 from the appellant, explaining his further attempts to obtain documents from his bank;
- (b) Letter dated 1 June 2011 from Randie Brazie, psychiatrist at Cornwall House, confirming the appellant is suffering post traumatic stress disorder and is on anti-depressant medication;
- (c) Letter dated 30 May 2011 from John Thorburn, clinical psychologist, confirming the same;
- (d) Letter dated 8 May 2011 from Dr Paul Charlick, a congregation member from GHI Church;

- (e) Letter dated 9 June 2011 from Simon Beck and David Wilson, Wardens at GHI Church;
- (f) Letter dated 8 June 2011 from AA;
- (g) Printout of Jordanian domain names from the National Information Technology Center;
- (h) A printout from www.google.com, indicating nil results for the web address www.[JKL].com.jo;
- (i) An email advice of non-transmission of a test email sent by counsel to info@[JKL].com.jo;
- (j) Three articles on grammar from the Internet (two unsourced and one from www.slate.com);
- (k) Bundle of emails between the appellant and EE and between the appellant and Pastor DD.

[37] Counsel has lodged written opening submissions, dated 28 June 2011, and closing submissions, dated 18 July 2011.

[38] The documents and submissions are discussed in detail hereafter, as relevant.

## **ASSESSMENT**

[39] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) (section 129); and
- (b) a protected person under the 1984 Convention Against Torture (section 130); and
- (c) a protected person under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[40] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant's account.

### **Credibility**

[41] The appellant's account is disbelieved. Beyond accepting that he is a single Jordanian man, who has been attending a church in New Zealand, his account is rejected. Our reasons are as follows.

#### *Existence of the church*

[42] After lodgement of his refugee claim, the appellant submitted computer-generated 'flyers' from the church, which gave its address and telephone numbers. Armed with this information, the Refugee Status Branch sent an agent in Amman to visit the church. The agent reported back on 11 November 2010 that the church did not exist. First, there is no suburb named MNO. There are, however, two suburbs named North MNO and South MNO. In South MNO, there is no intersection of roads as named in the address on the flyers. Nor is there one in North MNO, though there is an intersection of streets one of which is the same and the other only slightly different. At that intersection, there is a building approximating the description given by the appellant (though not marble). Enquires at the building established, however, that it is a private house and has never been a church.

[43] The agent made numerous other enquiries with churches elsewhere in Amman and with the President of the Ecclesiastical Court. None had heard of the PQR Church or of either of the Pastors said to have worked there. Calls to the telephone numbers of the church revealed that they were not in service.

[44] The appellant's response to this was to assert that the church had closed down as from 30 September 2009. He produced emails from both EE and Pastor DD stating this. The authenticity of those emails is discussed later. They are, for the reasons given later, found to be false and are given no weight. It follows that the agent's inability to locate the church, or anyone who had heard of it, or of the two pastors said to have run it, remains a significant concern.

*Becoming involved in Christianity*

[45] It will be recalled that the appellant first became interested in Christianity when he became friends with a group of young Christians in ABC city. He was later directed by a Pastor he spoke to on the telephone, to the PQR Church in Amman.

[46] It is a surprising coincidence that the appellant's Christian friends also went to the PQR Church, yet he had never known this before he went there himself and saw them there. It is unlikely that the appellant – interested in Christianity as he says he was – would have associated regularly with his friends for some two years without being aware of the church to which they belonged.

[47] Further, given that the church is said to have been in Amman, 35km away – so far that the appellant had to reach it by taking two buses – it is inherently implausible that he would have ended up, unknowingly, at the same church as his friends. Invited to explain the implausibility, the appellant could only attribute it to coincidence.

*Employment in Jordan*

[48] It will be recalled that the appellant claims to have worked for a music shop in Jordan. That claim is contradicted by the documents he produced in support of his visa application.

[49] In applying for his New Zealand visa, the appellant produced:

- (a) a letter dated 24 March 2010 from Capital Bank in Jordan, advising that he had a balance in his account of 12,459 dinars;
- (b) three pages of on-line bank statements dated 28 March 2010, on the same account, showing all transactions from 1 August 2009, including a regular monthly salary of 1250 dinars, as well as other deposits and numerous withdrawals and electronic purchases;
- (c) scans of three credit cards from different Jordanian banks; and
- (d) a letter dated 28 March 2010 from the DEF Company to Immigration New Zealand, recording the appellant's employment there since 2004 and his monthly salary of 1250 dinars.



[50] The appellant says that the bank letter and statement are bogus. While he agrees that it is his account, he says that his friend EE had the letter and statements fabricated so that it would appear that the appellant had steady employment in Jordan.

[51] We reject that explanation as untruthful. The statements are detailed documents, recording transactions over seven months. Minutiae such as “balance certificate” commission and “VISA electronic fees” are recorded. The detail, including credit and debit transaction balances and the assignment of six-digit code numbers for every ATM withdrawal combine to make it unlikely that the document is forged. The evidence does not establish the appellant’s claim that the statements are forgeries.

[52] We do not overlook that the appellant also claims that the letter of 28 March 2010 from his employer is, similarly, forged. In support of that assertion, counsel submits that the email address for the company on the letter is non-existent. The Tribunal accepts that the email address on the foot of the letter does not appear to be currently valid (an email to that address results in a “domain is not found” response) but that, of itself, does not establish that the company did not exist at the time of the letter. And even if the letter is bogus, it does not mean that the letter from the bank and the bank statements are also bogus.

[53] If more were needed, when the appellant was initially asked by the Tribunal about the letter from the bank, indicating a balance of 12,459 dinars in his account, he explained that his friend EE had briefly lodged funds in his account to enable the bank to generate the letter and to thus make it appear that he (the appellant) was well-resourced. The bank statements give the lie to that claim. They show a steady progression of increasing, albeit fluctuating, savings from an opening balance of 9,293 dinars in August 2009, to the final total of 12,378 on 25 March 2010. There is no evidence of a single large payment to bolster the account in or about March 2010.

[54] The appellant’s response to this was to assert that his friend EE had been able to doctor his bank statements, so as to show a false series of transactions. As to how he could have done so, the appellant could not say, except to say that he thought that his friend knew people at the bank who could arrange it. That explanation is specious. To suppose that EE would happen to know people who worked at the appellant’s bank, and who were not only able to materially change bank statements but were also willing to do so, is so far-fetched as to be unbelievable. Finally, it is also implausible that, if EE had had the capacity to

produce the bogus bank statements, he would still have needed to briefly lodge one large deposit in order to have the bank generate its letter of 24 March 2010.

*The email exchanges with EE and Pastor DD*

[55] The appellant did not, initially, provide any corroborative evidence from either EE or Pastor DD. Once the Refugee Status Branch began querying the veracity of his account, however, he submitted what purports to be an exchange of emails between EE and himself (dated between 24 May 2010 and 17 November 2010) and between Pastor DD and himself (dated between 5 September 2010 and 21 November 2010).

[56] The emails share a number of characteristics which suggest that they were all written by the same hand:

- (a) The email addresses of all three are at Internet sites unconnected with any Internet service provider. The accounts for the appellant and for Pastor DD are at @yahoo.com and that for EE is at @rocketmail.com. Such accounts are easily created without proof of identity, from anywhere in the world. While they could be accounts genuinely set up by the persons concerned, equally, they could be accounts created by the appellant.
- (b) Emails supposedly written by EE and the appellant contain similar use of multiple exclamation marks. Examples are:

EE to the appellant:

“. I read it!!!!!!! We feel very very very sorry sorry for you [X]!!!!  
We feel very very bad!!!!!!, oh my lord jesus Christ!!!!!!”

The appellant to EE:

“I just received a letter from the immigration has shocked me!!!

They are trying to call the church all the numbers not in service!!!

Plus searching about the address!!!

What’s going on there at the church man!!!

I don’t believe the immigration letter at all!!!”

The appellant explains this by arguing that many people, today, use exclamation marks to emphasise dramatic points. That is not in contention. What is in contention, is that it is uncommon to see the

repeated use of multiple exclamation marks in such fashion, by two people.

- (c) Emails supposedly between the appellant and Pastor DD have both parties consistently using the same grammatical mistake “I’ am”, with a superfluous apostrophe. Even more remarkably, the same error occurs in an email supposedly written by EE in his quite separate correspondence to the appellant. Such an unusual error by two persons would be astonishing. That it would be used by three defies belief. We have considered the possibility that the appellant might have picked up the habit from either Pastor DD or EE but it appears in emails from each of them and the two streams of correspondence were discrete.
- (d) EE, on 17 November 2010, responded to the appellant’s concern that the church appeared to have been closed. At the end of his response, EE recorded, gratuitously, that:

“... we were renting inside a house a living room, and we used this living room for services and bible study, we don’t own the house, the house not registered under the PQR Church, there is no sign or board shows the name of the church, it’s a private[.]”

At the time of this email, the appellant had just been notified by the Refugee Status Branch (by letter dated 12 November 2010) of the visit by its agent to the private house in North MNO. The appellant’s email to EE which preceded the email quoted above, however, had not made any mention of the ‘private house’ information from the Refugee Status Branch’s agent. That EE would have spontaneously replied as he did involves a significant, and concerning, degree of coincidence.

*Lack of corroborative oral evidence from EE and Pastor DD*

[57] The Refugee Status Branch raised with the appellant the possibility of interviewing either or both EE and Pastor DD. The emails from both men, however, purport to refuse to be telephoned. No sensible explanation is advanced. Given that Pastor DD is said to be now living in the United States, such unexplained reticence, from a man professedly in a pastoral role, is difficult to comprehend.

*Other concerns*

[58] There are other credibility concerns.

[59] The appellant has used various aliases, including the English names FF and GG. His explanation – that he just likes to do so – is unsatisfactory. Further, he initially claimed to have only thought of the name FF after he had arrived in New Zealand. Asked to explain why that name was part of the email address recorded on the bank statement by his bank in Jordan and also in his visa application, he conceded that he had, in fact, used it earlier and postulated that EE had invented the name.

[60] We cannot say why the appellant has used different aliases at different times. We find, however, that his explanation for doing so and his history of using aliases for no sensible reason is unsatisfactory.

[61] The ‘Special Statement of the XX Clan’ supposedly provided by EE is suspicious both as to its origins and as to its content.

[62] As to its origins, it is implausible that EE would have conducted a conversation with Pastor DD within the earshot of anyone else, let alone that he would do so in earshot of someone clearly not associated with the church. It must be remembered that EE is said to have had to shelter the appellant from his family for a month and then go to considerable lengths to get him safely out of the country. The need for confidentiality could hardly have escaped EE.

[63] As to its content, the statement is implausible. It merely names the appellant (not even his full name) and gives no other identifying information about him. His home city is mentioned, but only in the context of a list of four such centres, including Amman. How readers could distinguish him from others of the same name is not explained. Given the seriousness of the purported threat in the document, the lack of clarity as to its subject is surprising.

[64] As to the signature on the statement, the appellant initially stated that he did not know who had signed it on behalf of the clan. Reminded that his father was said to be one of the 12-15 council members, he agreed that he knew them all but still could not say whose signature it was. Immediately, however, he changed his account and stated that he was “90 percent” sure it was his father’s signature. Asked whether he had seen his father’s signature on other documents, he initially denied ever having done so but then, again, changed his evidence and agreed

that he had, but had not focussed on it. In all, the appellant's evidence as to the signature was unimpressive.

[65] For the sake of completeness, it is noted that the statement is inconsistent with the appellant's own account. It accuses him of having tried to convert his parents to Christianity - a claim which he denied to us. It is an inconsistency which he could not explain.

[66] Finally, we do not overlook that the appellant has put forward evidence which indicates that he is suffering mental health issues, described as 'post traumatic stress disorder'. The cause is not something about which either Randie Brazie, psychiatrist, or John Thorburn, clinical psychologist, can have any personal knowledge and it is clear from their reports that they have relied entirely on the appellant's self-report. It follows that, while he may well have genuine mental health issues, the reports of the two experts do not corroborate the appellant's account of its cause. To be fair to Mr Brazie and Mr Thorburn, neither represents that he has any personal knowledge, nor that the account presented to him is one which he endorses as truthful.

### **Conclusion on Credibility**

[67] Taken cumulatively, the foregoing concerns are such that we conclude that the appellant's account is not credible. We accept that he is a single man from Jordan, who attends a church in New Zealand. Beyond that, we do not accept his account as truthful.

[68] It is on those limited facts that the appellant's claim falls to be assessed.

### **The Refugee Convention**

[69] Section 129(1) of the Act provides that:

"A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention."

[70] Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[71] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

### **Assessment of the Claim to Refugee Status**

[72] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[73] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008) at [57].

*Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Jordan?*

[74] The answer to that question is no.

[75] The evidence does not establish that the appellant is a genuine convert to Christianity. We accept that he has been attending a church in New Zealand, where he has been baptised. We decline, however, to infer that his motives for doing so are because he has undergone a conversion from Islam to Christianity. The short point is that he has put forward a false claim for refugee status. Whether the attendance at church is genuine, or for the purpose of bolstering the refugee claim, or for some other reason, we decline to speculate. What we are satisfied of, however, is that the appellant has not established that he is a genuine convert to Christianity.

[76] The profile of a single Jordanian man who has been attending a church in New Zealand does not create a real chance of the appellant being persecuted in Jordan. The evidence does not establish that anyone in Jordan is aware of his activity in New Zealand, or that he would continue to attend a church in Jordan if he returns there. Any risk of serious harm to the appellant is speculative only and falls well short of the threshold of a real chance.

[77] In the circumstances, it is not necessary for us to explore the country information as to the risk (if any) to Christian converts in Jordan.

*Is there a Convention reason for the persecution?*

[78] The first issue being answered in the negative, the second issue does not arise.

### **Conclusion on Claim to Refugee Status**

[79] The appellant does not have a well-founded fear of being persecuted in Jordan for any Convention reason.

### **The Convention Against Torture**

[80] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

### **Conclusion on Claim under Convention Against Torture**

[81] The same findings of credibility and fact apply to the enquiry under the Convention Against Torture. In short, the profile of a single Jordanian man who has been attending a church in New Zealand does not create substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand.

### **The ICCPR**

[82] Section 131(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing

that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

### **Conclusion on Claim under ICCPR**

[83] Again, the same findings of credibility and fact apply to the enquiry under the ICCPR. In short, the profile of a single Jordanian man who has been attending a church in New Zealand does not create substantial grounds for believing that the appellant would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

### **CONCLUSION**

[84] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is not a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[85] The appeal is dismissed.

"C M Treadwell"  
C M Treadwell  
Member

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C M Treadwell  
Member